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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Portland Division

DONNA M. HANSEN

3:10-CV-3061-MA

Plaintiff,

OPINION AND ORDER

v.

MICHAEL ASTRUE,  
Commissioner of Social  
Security,

Defendant.

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Attorneys for Defendant

MARSH, Judge.

The matter is before the court on plaintiff's Amended Motion (doc. 25) to Allow EAJA Fees and Expenses in the total amount of \$6,919.45, following this court's July 7, 2011, Opinion and Order remanding this case to the Commissioner to obtain further medical evidence as to whether plaintiff suffers from a Somatoform disorder and/or any other mental impairment that, in combination with her other impairments, precludes her from engaging in substantial gainful activity. The Commissioner opposes the motion, arguing that his position in both the administrative proceedings and this litigation was substantially justified.

Under the Equal Access to Justice Act, a prevailing party is entitled to fees and costs incurred in "proceedings for judicial review of agency action, brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

The court concludes the Commissioner was not substantially justified in making a finding that plaintiff was not disabled based in substantial part on the opinions of consulting medical

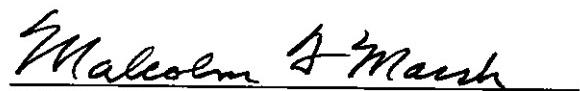
practitioners who questioned plaintiff's credibility, while disregarding the opinions of plaintiff's treating medical practitioners as well as two medical practitioners who examined plaintiff on behalf of the Commissioner, recommended further examination, and did not question plaintiff's credibility.

For these reasons, the court rejects the Commissioner's argument that plaintiff is not entitled to an award of attorneys fees under the EAJA.<sup>1</sup>

The court, therefore, **GRANTS** plaintiff's Motion to Allow EAJA Fees and Expenses (doc. 25). The Commissioner, however, shall have ten (10) days from the date this Opinion and Order is entered either to stipulate to or file a motion challenging the reasonableness of the amount of attorneys fee requested by plaintiff.

IT IS SO ORDERED.

DATED this 22 day of November, 2011.

  
Malcolm F. Marsh  
MALCOLM F. MARSH  
United States District Judge

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<sup>1</sup> The Commissioner asserts he did not have sufficient time to make a decision whether to stipulate to the reasonableness of the amount of the fees requested by plaintiff before being required to file a response to the pending fee request.